

**PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF  
HABEAS CORPUS BY A PERSON IN STATE CUSTODY**

<b>United States District Court</b> <sup>2006 MAY 11/4</sup>		District <b>MIDDLE</b>
Name (under which you were convicted): <b>HORACE BUSH</b>		Docket or Case No.: <b>2:06cv428-MHT</b>
Place of Confinement: <b>STATON CORR. FACILITY</b>		Prisoner No.: <b>#138454</b>
Petitioner (include the name under which you were convicted) <b>HORACE BUSH</b>		Respondent (authorized person having custody of petitioner) <b>WARDEN LEON FORNISS, et., al.,</b>
The Attorney General of the State of <b>THE STATE OF ALABAMA</b>		

**PETITION**

- (a) Name and location of court that entered the judgment of conviction you are challenging: CIRCUIT COURT FOR MOBILE COUNTY, MOBILE, ALABAMA  
 (b) Criminal docket or case number (if you know): CC-84-1402
- (a) Date of the judgment of conviction (if you know): 5-23-84  
 (b) Date of sentencing: 5-23-84
- Length of sentence: 30yrs.
- In this case, were you convicted on more than one count or of more than one crime? Yes ☐ No ☒
- Identify all crimes of which you were convicted and sentenced in this case: ROBBERY III  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_
- (a) What was your plea? (Check one)
 

(1) Not guilty <input type="checkbox"/>	(3) Nolo contendere (no contest) <input type="checkbox"/>
(2) Guilty <input checked="" type="checkbox"/>	(4) Insanity plea <input type="checkbox"/>

(b) If you entered a guilty plea to one count or charge and a not guilty plea to another count or charge, what did you plead guilty to and what did you plead not guilty to? N/A

(c) If you went to trial, what kind of trial did you have? (Check one)

Jury ☐ Judge only ☒

7. Did you testify at a pretrial hearing, trial, or a post-trial hearing?

Yes ☐ No ☒

8. Did you appeal from the judgment of conviction?

Yes ☐ No ☒

9. If you did appeal, answer the following:

(a) Name of court: N/A

(b) Docket or case number (if you know): N/A

(c) Result: N/A

(d) Date of result (if you know): N/A

(e) Citation to the case (if you know): N/A

(f) Grounds raised: N/A

(g) Did you seek further review by a higher state court? Yes ☐ No ☒

If yes, answer the following:

(1) Name of court: N/A

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Result: \_\_\_\_\_

(4) Date of result (if you know): \_\_\_\_\_

(5) Citation to the case (if you know): \_\_\_\_\_

(6) Grounds raised: \_\_\_\_\_

(h) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If yes, answer the following:

(1) Docket or case number (if you know): N/A

(2) Result: \_\_\_\_\_

(3) Date of result (if you know): \_\_\_\_\_

(4) Citation to the case (if you know): \_\_\_\_\_

10. Other than the direct appeals listed above, have you previously filed any other petitions, applications, or motions concerning this judgment of conviction in any state court?

Yes ☐ No ☒

11. If your answer to Question 10 was "Yes," give the following information:

(a) (1) Name of court: N/A

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

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\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☐ N/A

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(b) If you filed any second petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒ N/A

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(c) If you filed any third petition, application, or motion, give the same information:

(1) Name of court: \_\_\_\_\_

(2) Docket or case number (if you know): \_\_\_\_\_

(3) Date of filing (if you know): \_\_\_\_\_

(4) Nature of the proceeding: \_\_\_\_\_

(5) Grounds raised: \_\_\_\_\_

(6) Did you receive a hearing where evidence was given on your petition, application, or motion?

Yes ☐ No ☒

(7) Result: \_\_\_\_\_

(8) Date of result (if you know): \_\_\_\_\_

(d) Did you appeal to the highest state court having jurisdiction over the action taken on your petition, application, or motion?

(1) First petition: Yes ☐ No ☒

(2) Second petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☒

(3) Third petition: Yes ☐ No ☐

(e) If you did not appeal to the highest state court having jurisdiction, explain why you did not: N/A

12. For this petition, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

CAUTION: To proceed in the federal court, you must ordinarily first exhaust (use up) your available state-court remedies on each ground on which you request action by the federal court. Also, if you fail to set forth all the grounds in this petition, you may be barred from presenting additional grounds at a later date.

**GROUND ONE:** WHETHER ALABAMA RETAINS SUBJECT MATTER AND PERSON

JURISDICTION TO VIOLATE BUSH'S PAROLE, THUS, DETAIN BUSH

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): BUSH

ALLEGEDLY VIOLATED HIS PAROLE IN THE STATE OF OHIO. BUSH PAROLED

FROM THE STATE OF ALABAMA WHEREIN HIS PAROLE WAS SAID TO RUN CC

WITH THE PAROLE IN OHIO. THE VIOLATION OCCURRED IN THE STATE OF

OHIO IN WHICH OHIO PLACED A WARRANT ON BUSH AND DETAINED HIM IN

THE FRANKLIN COUNTY JAIL FOR REVOCATION. BUSH WAS THEN TRANFERRED

TO THE STATE OF ALABAMA WHERE HE REMAINS IMPRISONED ON OHIO CHARGES.

(b) If you did not exhaust your state remedies on Ground One, explain why: \_\_\_\_\_

HABEAS CORPUS IS THE PROPER REMEDY FOR CLAIMS OF ILLEGAL DETENTION.

**(c) Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: N/A

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: N/A

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

N/A

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground One: \_\_\_\_\_

**GROUND TWO: WHETHER BUSH'S DUE PROCESS RIGHTS WERE VIOLATED**

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):  
IN THIS INSTANCE, BUSH NEVER HAD THE BENEFITS OF PRESENTING ANY  
DEFENSE IN REGARDS OF THE ALLEGATIONS AGAINST HIM CONCERNING THE  
CHARGES IN WHICH HIS PAROLE VIOLATION RESTS. Further, Bush was  
never charged with any offenses by the State Of Alabama which  
would terminate his parole. Thus, Alabama does not retain jurisdiction  
(personal, subject matter, nor exclusive) to charge, compell, nor  
prosecute Bush for offenses committed in another jurisdiction.

(b) If you did not exhaust your state remedies on Ground Two, explain why: \_\_\_\_\_

N/A

**(c) Direct Appeal of Ground Two:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_ N/A

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☒

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Two: N/A

**GROUND THREE:** WHETHER BUSH IS BEING ILLEGALLY DETAINED BY THE  
STATE OF ALABAMA

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

BUSH ALLEGEDLY COMMITTED TECHNICAL VIOLATIONS IN THE STATE OF OHIO  
WHEREIN A WARRANT WAS ISSUED FOR HIS ARREST. ALABAMA ACTED ON THE  
WARRANT DESPITE OF THE FACT THAT BUSH WAS OR HAD ALREADY BEEN  
DETAINED BY THE APPROPRIATE AUTHORITIES. UNCONCIOUSLY, THE STATE  
OF OHIO RELEASED THE DEFENDANT TO THE STATE OF ALABAMA FAILING  
TO REALIZE THAT THE OUTSTANDING WARRANT WAS IN FACT ISSUED BY OHIO.

(b) If you did not exhaust your state remedies on Ground Three, explain why: \_\_\_\_\_

N/A

(c) **Direct Appeal of Ground Three:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

N/A

(d) **Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: N/A

Name and location of the court where the motion or petition was filed: \_\_\_\_\_



Docket or case number (if you know): N/A

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

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(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Three: \_\_\_\_\_

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**GROUND FOUR:** N/A

(a) **Supporting facts** (Do not argue or cite law. Just state the specific facts that support your claim.): \_\_\_\_\_

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(b) If you did not exhaust your state remedies on Ground Four, explain why: \_\_\_\_\_

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**(c) Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☐

(2) If you did not raise this issue in your direct appeal, explain why: \_\_\_\_\_

\_\_\_\_\_

**(d) Post-Conviction Proceedings:**

(1) Did you raise this issue through a post-conviction motion or petition for habeas corpus in a state trial court?

Yes ☐ No ☐

(2) If your answer to Question (d)(1) is "Yes," state:

Type of motion or petition: \_\_\_\_\_

Name and location of the court where the motion or petition was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(3) Did you receive a hearing on your motion or petition?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion or petition?

Yes ☐ No ☐

(5) If your answer to Question (d)(4) is "Yes," did you raise this issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (d)(4) is "Yes," state:

Name and location of the court where the appeal was filed: \_\_\_\_\_

\_\_\_\_\_

Docket or case number (if you know): \_\_\_\_\_

Date of the court's decision: \_\_\_\_\_

Result (attach a copy of the court's opinion or order, if available): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

(7) If your answer to Question (d)(4) or Question (d)(5) is "No," explain why you did not raise this issue:

N/A

(e) **Other Remedies:** Describe any other procedures (such as habeas corpus, administrative remedies, etc.) that you have used to exhaust your state remedies on Ground Four: \_\_\_\_\_

N/A

13. Please answer these additional questions about the petition you are filing:

(a) Have all grounds for relief that you have raised in this petition been presented to the highest state court having jurisdiction? Yes ☐ No ☐

If your answer is "No," state which grounds have not been so presented and give your reason(s) for not presenting them: \_\_\_\_\_

N/A

(b) Is there any ground in this petition that has not been presented in some state or federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them: \_\_\_\_\_

14. Have you previously filed any type of petition, application, or motion in a federal court regarding the conviction that you challenge in this petition? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, the issues raised, the date of the court's decision, and the result for each petition, application, or motion filed. Attach a copy of any court opinion or order, if available. \_\_\_\_\_

N/A

15. Do you have any petition or appeal now pending (filed and not decided yet) in any court, either state or federal, for the judgment you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised. \_\_\_\_\_

\_\_\_\_\_ N/A \_\_\_\_\_

16. Give the name and address, if you know, of each attorney who represented you in the following stages of the judgment you are challenging:

(a) At preliminary hearing: \_\_\_\_\_

\_\_\_\_\_ N/A \_\_\_\_\_

(b) At arraignment and plea: \_\_\_\_\_

(c) At trial: \_\_\_\_\_

(d) At sentencing: \_\_\_\_\_

(e) On appeal: \_\_\_\_\_

(f) In any post-conviction proceeding: \_\_\_\_\_

(g) On appeal from any ruling against you in a post-conviction proceeding: \_\_\_\_\_

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☐

(a) If so, give name and location of court that imposed the other sentence you will serve in the future: \_\_\_\_\_

(b) Give the date the other sentence was imposed: \_\_\_\_\_

(c) Give the length of the other sentence: \_\_\_\_\_

(d) Have you filed, or do you plan to file, any petition that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. TIMELINESS OF PETITION: If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2244(d) does not bar your petition. \*

IN THIS PARTICULAR INSTANCE THE PETITIONER HAS NOT RECIEVED  
ANY DUE PROCESS WHICH WOULD COMMENCE THE TIMELYNES ISSUE  
HEREIN.

\* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2244(d) provides in part that:

- (1) A one-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of —
- (A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
  - (B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such state action;
  - (C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
  - (D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.
- (2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

SWORN TO AND SUBSCRIBED BEFORE ME this the 9th day of  
May, 2006.

J. C. Burnett  
Notary Public

My Commission Expires: 1-21-08

Horace Bush  
HORACE BUSH #138454  
PETITIONER